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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

RHONDA KASTAN, Plaintiff, vs. COUNTRYWIDE HOME LOANS, and DOES 1-50, inclusive, Defendant.	Case No. C08-05104 [HRL] **FIRST AMENDED COMPLAINT FOR:** **1. FRAUDULENT MISREPRESENTATION** **2. FRAUDULENT INDUCEMENT** **3. UNFAIR DEBT COLLECTION PRACTICES** **4. PREDATORY LENDING PRACTICES** **5. QUIET TITLE** **6. DECLARATORY RELIEF** **7. INJUNCTIVE RELIEF** **8. ACCOUNTING** **AND JURY DEMAND**

Plaintiff's RHONDA KASTAN alleges:

Jurisdiction

1. This Court has jurisdiction under 12 U.S.C. §§ 2601 – 2617 as this action involves violations of the Real Estate Settlement Procedures Act ("RESPA") with jurisdiction conferred on this Court by 12 U.S.C. § 2614. This Court has jurisdiction under 15 U.S.C. §§ 1601 *et seq.* as this action involves violation of the Truth In Lending Act ("TILA") with jurisdiction conferred on this Court by 15 U.S.C. § 1640(e). This Court has jurisdiction under 15 U.S.C. § 1637 as this action involves violation of the Home Ownership and Equity Protection Act ("HOEPA"). This Court has jurisdiction under 15 U.S.C. §§ 1692 *et seq.*, as this action involves violations of the Fair Debt Collection Practices Act ("FDCPA") with jurisdiction conferred on this Court by 15 U.S.C. § 1692k (d). Supplemental subject matter jurisdiction of the pendent state law claims is conferred on this Court by 28 U.S.C. § 1367.

2. The real property which is the subject of this action is located within the Jurisdiction of this Court and therefore, venue is proper pursuant to 28 U.S.C § 1391(a) and California Code of Civil Procedure § 392.

Parties

3. At all times mentioned herein, Plaintiff RHONDA KASTAN("Plaintiff") were and are a natural persons residing in the County of Monterey and is the rightful owner in possession of that certain real property commonly identified as 3083-3085 Crescent Avenue, Marina, California 93933 (hereinafter the "Subject Property"). Plaintiff is "consumers" as defined by 15 U.S.C. § 1602(h).

4. Plaintiff is informed and believe and based thereon alleges that, at all times mentioned herein defendant COUNTRYWIDE HOME LOANS, INC., (hereinafter "COUNTRYWIDE" OR "TRUSTEE") was and is a limited liability company doing business in the State of California, County of Los Angeles.

5. Plaintiff is informed and believe and based thereon alleges that Does 1 – 50 are persons or entities whose names and capacities are unknown to

Plaintiff. Plaintiff alleges that Does 1 - 50 are in some way involved in the actions complained of herein as either independent actors, or as agents or principals of the other named defendants. Plaintiff will amend this complaint to allege the true identities, capacities and roles of Does 1 – 50 as and when they are ascertained.

General Allegations As To All Claims

(As To All Defendants)

6. On or about February 20, 2007, Plaintiff purchased the Subject Property as his primary residence. The original lender financed Plaintiff's purchase of the Subject Property in the amount of $659,200.00. The note was secured by a Deed of Trust recorded against the Subject Property on or about February 28, 2007.

7. was the original Trustee under both of the Deeds of Trust.

8. Green Point Mortgage, Inc. is named as the Lender in the Deed of Trust. However, the Deed of Trust states that Mortgage Electronic Registration Systems, Inc. ("MERS") is a "separate corporation that is **acting as a nominee for Lender and Lender's successors and assigns**. MERS is the beneficiary under this Security Instrument."

9. Plaintiff is informed and believe and based thereon alleges that MERS is an entity set up by the mortgage industry to facilitate and to keep hidden the transfer of mortgages on the secondary mortgage market and save lenders the cost of recording assignments. Plaintiff is further informed and believe and based thereon alleges that the purpose and effect of MERS is to prevent homeowners, such as Plaintiff, from knowing whether and to whom their notes have been assigned and who is the true beneficiary under Trust Deed No. 1.

10. Plaintiff is informed and believe and based thereon alleges that MERS is neither a mortgage lender not does it own or have any beneficial interest in any note or mortgage.

11. Plaintiff is informed and believe and based thereon alleges that there

is no record of an assignment of the Note in the public record.

12. Plaintiff is informed and believe and based thereon alleges that on or about April 22, 2008, Defendants COUNTRYWIDE HOME LOANS, INC. (hereinafter, TRUSTEE"), recorded a Notice of Default and Election to Sell Under Deed of Trust ("Notice of Default") against the Subject Property.

13. The Notice of Default recorded by TRUSTEE advises Plaintiff as follows, in pertinent part

"**IF YOUR PROPERTY IS IN FORECLOSURE BECAUSE YOU ARE BEHIND IN YOUR PAYMENTS IT MAY BE SOLD WITHOUT ANY COURT ACTION,** and you may have the legal right to bring your account in good standing by paying all of your past due payments plus permitted costs and expenses within the time permitted by law for reinstatement of your account, which is normally five business days prior to the date set for the sale of your property. No sale date may be set until three months from the date this notice of default may be recorded (which date of recordation appears on this notice).

This amount is **$13, 3123.32** as of **04/22/08** and will increase until your account becomes current."

14. Plaintiff is informed and believe and based thereon alleges that on or about August 14, 2008, TRUSTEE, recorded a Notice of Trustee's Sale.

15. Plaintiff is informed and believe and based thereon alleges that in engaging in the activities alleged herein, TRUSTEE was attempting to collect a "consumer debt" and was acting as a "debt collector" as those terms are defined under the Federal Fair Debt Collection Practices Act at 15 U.S.C. Sections 1692a(5) and (6), respectively. *Wilson v. Draper, 443 F.3d 373, 375-379 (4th Cir. 2006).*

16. Plaintiff is informed and believe and based thereon alleges that Defendants were not entitled to foreclose on the Deed of Trust recorded against the Subject Property because they are not and were not either: (a) the "holders" of

a note that substantiates their alleged claim to an interest in the Subject Property that would afford them the right to foreclose; (b) a nonholder in possession of a note executed by Plaintiff who had the rights of a holder to foreclose on Trust Deed No. 1 against the Subject Property; or (c) a person not in possession of a note that substantiates their claim to an interest in the Subject Property who was otherwise entitled to enforce the Deed of Trust under California law.

17. Plaintiff further alleges that Defendants did not have the right to direct TRUSTEE to foreclose on the Deed of Trust and sell the Subject Property owned by Plaintiff.

18. On or about August 18, 2008, Plaintiff, through their attorneys, demanded in writing that Defendant TRUSTEE suspend any foreclosure sale of the Subject Property unless and until TRUSTEE obtained and provided to Plaintiff proof that TRUSTEE or Does 1 – 10 had in their possession the original Note properly endorsed and or properly assigned to it as of a date preceding the date of the Notice of Default recorded by TRUSTEE.

19. TRUSTEE failed and refused to suspend the sale of the Subject Property or to provide proof of DOES 1-10's right to initiate foreclosure as requested in the Demand although TRUSTEE was required to so under 15 U.S.C. § 1692a and Civil Code § 1788.17

20. In the Demand, Plaintiff, through Plaintiff's attorney, further requested a detailed accounting of how the stated amount to be paid to redeem the property from foreclosure had been calculated so the Plaintiff could adequately evaluate Plaintiff's rights under the law as to Plaintiff's presale right of redemption.

21. Although TRUSTEE was required to do so under the Federal Fair Debt Collection Practices Act, TRUSTEE failed to provide the information requested. In fact, Defendants' response to the Demand, if any, has been so inadequate as to prevent Plaintiff from determining whether any or all of the charges included in their payoff demand were justified or proper.

22. ******Plaintiff is informed and believe and based thereon alleges that on or about August 14, 2008, over Plaintiff's objections and without responding to Plaintiff's requests for information or postponing the sale pending verification of the debt, Defendants conducted an illegal Trustee's non-judicial foreclosure sale of the Subject Property and the Subject Property reverted to the unknown true beneficiary under Trust Deed No. 1 or some other unidentified entity.

23. Plaintiff is informed and believe and based thereon alleges that Defendants and each of them, in initiating the foreclosure process without proper possession of a note that substantiates their claim to an interest in the Subject Property, proper endorsement of a note to them or any other legal right to foreclose in this case and with respect to many other trust deed instruments, engaged in a pattern and practice of utilizing the non-judicial foreclosure procedures of the State of California to foreclose on the Subject Property when they had no right to do so.

24. Plaintiff is further informed and believe and based thereon alleges that Defendants, and each of them, have conducted themselves in the manner specified in this Complaint with the belief that the property owners affected did not have the knowledge and means to contest the right of said Defendants to do so.

25. As a result of Defendants' conduct as alleged herein, Plaintiff have been damaged in that they have lost their home and have had to hire attorneys to protect their rights and to bring this action to stop the wrongful acts of Defendants, and each of them. Plaintiff have retained M. W. Roth, PLC, a professional law corporation for the purpose of instituting this action and are therefore entitled to reasonable attorney's fees.

First Claim

Fraudulent Misrepresentation

(As To All Defendants)

26. Plaintiff realleges and incorporates by reference those allegations appearing in paragraphs 1 to 25 of this Complaint as though fully set forth herein.

27. In pursuing non-judicial foreclosure, including, without limitation, recording the Notice of Default on April 22, 2008, and the Notice of Trustee's Sale on August 14, 2008, and mailing said notices to Plaintiff and others, Defendants and each of them, falsely represented that they had the right to payment under a note executed by Plaintiff in favor of the Original Lender, and further had the right to foreclose on the Subject Property and sell the Subject Property.

28. Plaintiff is informed and believe and based thereon alleges that the true facts are that Defendants are not and were not in possession of a note secured by the Subject Property, nor are they holders of a note that substantiates their claim to an interest in the Subject Property or non-holders of a note entitled to payment, as those terms are used in the Uniform Commercial Code §§ 3301, 3309, and therefore the Defendants, and each of them, foreclosed non-judicially without a note secured by the Subject Property and thus, without right under law.

29. Plaintiff is informed and believe and based thereon alleges that when Defendants, and each of them, misrepresented to Plaintiff and others that they had the right to foreclose on the Subject Property, they intended to either force Plaintiff to pay large sums of money to Defendants, and each of them, to which they were not entitled under the law, or to abandon the Subject Property to Defendants by not resisting the proposed foreclosure sale.

30. Plaintiff is further informed and believe and based thereon alleges that in notices sent to Plaintiff in and around April 22, 2008 and August 14, 2008, Defendants, and each of them, falsely represented the payoff amount, if any, required to redeem the Subject Property from foreclosure by adding costs and

charges to the payoff amount that were not justified and proper under the terms of a note that substantiates their alleged claim to an interest in the Subject Property or under applicable law.

31. Plaintiff reasonably relied on Defendants' representations regarding their right to foreclose and whether any money was owed to Defendants and, if so, how much.

32. In misrepresenting and inflating the amounts owed and the costs and charges necessary to redeem the Subject Property prior to foreclosure, Defendants and each of them, damaged Plaintiff in that they made it impossible for Plaintiff to determine the actual amounts due, if any, substantially decreased the likelihood that Plaintiff would be able to redeem the Subject Property and deterred other potential buyers who might have paid more for the Subject Property with the apparent intent to prevent Plaintiff from redeeming the property and to cause the Subject Property to revert to Defendants in the event it was sold at foreclosure, which is exactly what occurred.

33. Plaintiff alleges that the conduct of Defendants, and each of them, was egregious, oppressive, malicious, and fraudulent, and undertaken with complete disregard for Plaintiff's legal and property rights, entitling Plaintiff to actual and punitive and exemplary damages according to proof at trial.

Second Claim

Fraudulent Inducement

(As To Does 1 to 50)

34. Plaintiff realleges and incorporates by reference those allegations appearing in paragraphs 1 to 33 of this Complaint as though fully set forth herein.

35. Plaintiff is informed and believe and based thereon alleges that in or about April 18, 2006, Defendants, and each of them intentionally misrepresented to Plaintiff that their income would be sufficient to repay the loan for the purchase of the Subject Property for the sole purpose of inducing Plaintiff to accept the loan so that Defendants could obtain interest, fees and charges

irrespective of Plaintiff's ability to repay the note with the knowledge that Defendants could either (a) pass the risk that Plaintiff would default to third parties or (b) recover possession of the Subject Property in the event Plaintiff defaulted, the latter of which is what actually occurred.

36. Plaintiff are further informed and believe and based thereon alleges that prior to granting Plaintiff the loan on or about February 20, 2007, Defendants, and each of them, failed to verify Plaintiff's ability to repay certain loans, and instead manufactured facts and figures, and documents to support granting Plaintiff the loan although Defendants knew that Plaintiff would be unable to repay the loan.

37. Plaintiff is informed and believe and based thereon alleges that Defendants, and each of them, originated the loans by lowering their own underwriting standards, in order that Plaintiff would be provided with funding knowing that it would become financially unbearable and burdensome to repay, causing Plaintiff to default on said loans and lose their home to a non-judicial foreclosure sale.

38. Plaintiff is informed and believe and based thereon alleges that Defendants, and each of them, engaged in these unlawful actions to satisfy their own greed with the knowledge that they could then pass the risk of loss on to third parties or recover the Subject Property at foreclosure.

39. Plaintiff justifiably relied on the misrepresentations of Defendants, and each of them, as to Plaintiff's qualifications for and ability to repay the loans based on their authority, positions, capacity, expertise, and in reliance thereupon have suffered damage and injury, including but not limited to, the loss of their home to a non-judicial foreclosure sale.

40. Plaintiff alleges that the conduct of Defendants, and each of them, was egregious, oppressive, malicious, and fraudulent, and undertaken with complete disregard for Plaintiff's legal and property rights, entitling Plaintiff to actual and punitive and exemplary damages according to proof at trial.

Third Claim

Unfair Debt Collection Practices

(Federal Fair Debt Collection Practices Act As To All Defendants)

(Rosenthal Fair Debt Collection Practices Act As To Does 1 to 50)

41. Plaintiff realleges and incorporates by reference those allegations appearing in paragraphs 1 to 42 of this Complaint as though fully set forth herein.

42. Plaintiff is informed and believe and based thereon alleges that Defendants and each of them, in taking the actions aforementioned, have acted as debt collectors as that term is defined under, but not limited to, California's Rosenthal Fair Debt Collection Practices Act, Civil Code §§ 1788.2, 1788.10, and 1788.17, and the Federal Fair Debt Collections Act, 15 U.S.C. §§1692a.

43. Plaintiff is informed and believe and based thereon alleges that the Defendants and each of them, in taking the actions aforementioned, have violated provisions of California's Rosenthal Fair Debt Collection Practices Act, including but not limited to Civil Code §§ 1788.10 (e) and (f) and 1788.17, and the Federal Fair Debt Collections Act, 15 U.S.C., Title 41, Subchap. V, §§1692 *et seq*. as set forth herein.

44. Plaintiff is informed and believe and based thereon alleges that Defendants, and each of them, are businesses or persons who use interstate commerce or the mails and wires in business, the principal purpose of which is the collection of debt, and regularly collect, directly or indirectly, debts owed or due or asserted to be owed or due to another.

45. Plaintiff is informed and believe and based thereon alleges that Defendants, and each of them, have engaged in, *inter alia*, the following wrongful collection methods:

a. Mailing collection letters and notices relating to non-judicial foreclosure, which were inaccurate in that they misrepresented the amounts owed and stated that Defendants had the authority to collect the amounts owed when they did not, the natural consequence of which was to harass, oppress and abuse.

b. Threatening legal action that could not be lawfully undertaken, specifically foreclosing upon the Subject Property when they are not the holders of a note that substantiates their claim to an interest in the Subject Property and lack the legal authority to foreclose.

46. Plaintiff is informed and believe and based thereon alleges that Defendants, and each of them, failed to inform Plaintiff of their right to request validation of the alleged debt which Defendants, and each of them, were attempting to collect as required by 15 U.S.C. § 1692g and California Civil Code § 1788.17.

47. Plaintiff is informed and believe and based thereon alleges that Defendants failed to verify the alleged debt as requested in the demand and failed to suspend their collection activities until the debt had been verified as required by 15 U.S.C. § 1692, et seq. and California Civil Code § 1788.17.

48. As a direct and proximate result of the actions of Defendants, Plaintiff have suffered the loss of their home and other, direct, actual injuries, in an amount not presently ascertainable but subject to proof at trial.

49. Plaintiff alleges that the conduct of Defendants, and each of them, was egregious, oppressive, malicious, and fraudulent, and undertaken with complete disregard for Plaintiff's legal and property rights, entitling Plaintiff to punitive and exemplary damages according to proof at trial.

50. Plaintiff is also entitled to recover statutory damages, together with costs of suit and reasonable attorney's fees under 15 U.S.C. § 1692k and Civil Code § 1788.30.

Fourth Claim

Predatory Lending Practices

(As To All Defendants With Respect To The Claim Based on Business and Professions Code §17200)

(As to Defendants Does 1 – 50 as to all other Claims)

51. Plaintiff realleges and incorporates by reference those allegations appearing in paragraphs 1 to 50 of this Complaint as though fully set forth herein.

52. Plaintiff is informed and believe and based thereon alleges that Defendants, and each of them, have collaborated to engage and engaged in predatory lending practices with respect to Plaintiff in violation of the Home Ownership and Equity Protection Act ("HOEPA"), 15 U.S.C. § 1637; the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601; Regulation Z, 12 C.F.R. 226; and, Business and Professions Code § 17200.

53. Plaintiff is a consumer and Defendants are creditors within the meaning of the HOEPA and are thus bound by its terms.

54. Plaintiff is informed and believe and based thereon alleges that Defendants have violated HOEPA in that, among other things, they have (a) failed to provide the disclosures regarding the right of rescission required by 15 U.S.C. § 1639(a)(1) or failed to provide them in the manner required; and (b) extended credit to Plaintiff without regard to their ability to repay in violation of 15 U.C.S. § 1639(h).

55. Plaintiff is informed and believe and based thereon alleges that Defendants' violation of 15 U.S.C. § 1639(h) may be remedied only by the rescission of the loans, and the payment of compensatory damages to Plaintiff in a sum to make Plaintiff whole.

56. Plaintiff is informed and believe and based thereon alleges that Defendants, and each of them, have violated 15 U.S.C. § 1601 *et seq.* and Regulation Z, 12 C.F.R. 226 by failing to disclose certain changes in the finance charges shown on the Truth In Lending Statement and improperly calculating

disclosed amounts, which grants Plaintiff the right to rescind the transaction.

57. Plaintiff is informed and believe and based thereon alleges that the statutory violations and unlawful actions or practices of Defendants as alleged in this Complaint constitute unlawful business acts and practices within the meaning of California Business and Professions Code § 17200 *et seq.*

58. Said unlawful business acts and practices include Defendants' failure to comply with statutory disclosure requirements under the Rosenthal Fair Debt Collection Practices Act, the Federal Fair Debt Collection Practices Act, the Real Estate Settlement Procedures Act, HOEPA, the Truth In Lending statutes and Regulation Z.

59. Plaintiff alleges that Defendants' misconduct, as alleged herein, has given them an unfair competitive advantage over their competitors in that had they complied with their obligations, Plaintiff and other similarly situated homeowners might have obtained financing from another lender.

60. Plaintiff alleges that as a direct and proximate result of Defendants' actions, they have prospered at Plaintiff's expense and benefitted from collecting mortgage payments and foreclosing on Plaintiff's property.

61. Wherefore, Plaintiff is informed and believe and based thereon allege that Plaintiff is entitled to equitable relief, including, restitution, and disgorgement of all profits obtained by Defendants by virtue of their misconduct.

62. Plaintiff is further informed and believe and based thereon alleges that Defendants, and each of them, have engaged in additional violations of the aforementioned statutes, the specifics of which are unknown, but which are subject to discovery and with respect to which the specifics will be alleged by amendment to this complaint when ascertained.

Fifth Claim

Quiet Title

(As To All Defendants)

63. Plaintiff realleges and incorporates by reference those allegations

appearing in paragraphs 1 to 62 of this Complaint as though fully set forth herein.

64. Plaintiff is the owners of the Subject Property pursuant to a Grant Deed executed in favor of Plaintiff and recorded in the Official Records of the County of Los Angeles.

65. Plaintiff seek to quiet title against the claims of Defendants as follows: Defendants hold themselves out as entitled to fee simple ownership of the Subject Property by and through non-judicial foreclosure, when in fact, Plaintiff alleges on information and belief that Defendants have no right, title, interest, or estate in the Subject Property, and had no right to conduct a foreclosure sale as either beneficiary or trustee, and Plaintiff's interest is adverse to Defendants' claims that they had a right to ownership, to conduct a foreclosure sale and to possession of the Subject Property.

66. Plaintiff seeks to quiet title as of September 05, 2008.

67. Plaintiff therefore seek a judicial declaration that the title to the Subject Property is vested in Plaintiff alone and that Defendants, and each of them, be declared to have no estate, right, title, or interest in the Subject Property and that said Defendants and each of them, be forever enjoined from asserting any estate, right, title, or interest in the Subject Property adverse to Plaintiff herein.

Sixth Claim

For Declaratory Relief

(As To All Defendants)

68. Plaintiff reallege and incorporate by reference those allegations appearing in paragraphs 1 to 70 of this Verified Complaint as though fully set forth herein.

69. Plaintiff alleges that an actual controversy exists as to the following issues.

70. Plaintiff contend that any loan agreements are void based on the facts as alleged herein, including but not limited to, Defendants' violation of

disclosure requirements, and other statutory and common law duties, including the duty to refrain from fraudulent misrepresentation, unfair debt collection practices, and predatory lending. However, it is Defendants' contention that they had the right to pursue certain remedies, including but not limited to non-judicial foreclosure.

71. Plaintiff contend that any non-judicial foreclosure sale conducted by Defendants, and each of them, is improper, in that Defendants are not holders of an original Note secured by the Subject Property and are not holders of any properly endorsed assignment of the same original Note. However, it is Defendants' contention that they had the right to proceed with a non-judicial foreclosure sale of the Subject Property.

72. Plaintiff alleges that Defendants' actions have undermined their right to the Subject Property and have interfered, and continued to interfere, with Plaintiff's right of possession of the Subject Property.

73. Plaintiff desire a judicial determination of their rights and duties, and a declaration as to the validity of any loan transactions and the right of ownership and possession of the Subject Property.

74. Plaintiff alleges that a judicial declaration is necessary and appropriate at this time under the circumstances in order that Plaintiff and Defendants may ascertain their respective rights with respect to the Subject Property.

Seventh Claim

For Injunctive Relief

(As To All Defendants)

75. Plaintiff realleges and incorporate by reference those allegations appearing in paragraphs 1 to 76 of this Complaint as though fully set forth herein.

76. Upon proof of the actions set forth herein, Plaintiff has a strong likelihood of prevailing on the merits of the case.

77. Plaintiff has been irreparably harmed by the sale of the Subject

Property and will suffer even greater harm if Defendants are allowed to obtain possession of the Subject Property because the property is unique and cannot be replaced. Therefore, should Defendants, and each of them, not be enjoined, Plaintiff will suffer irreparable injury for which there is no adequate remedy at law.

78. Wherefore, Plaintiff request that this Court grant to Plaintiff a Temporary Restraining Order, and Preliminary and Permanent Injunction under Code of Civ. Proc. Section 527 and California Rules of Court, Rule 3.1150, first, as to any action to obtain possession of the Subject Property, second, ordering Defendants to restore title and possession of the Subject Property to Plaintiff, and third, a Permanent Injunction precluding Defendants from engaging in the wrongful conduct identified herein in the future.

Eighth Claim

For An Accounting

(As To All Defendants)

79. Plaintiff realleges and incorporate by reference those allegations appearing in paragraphs 1 to 80 of this Complaint as though fully set forth herein.

80. Although Plaintiff, through their counsel have made demand for an accounting of the payments made by Plaintiff and the amounts Defendants allege is due, Defendants have failed and refused to provide such an accounting although they are legally obligated to do so.

81. Wherefore, Plaintiff request that this Court order Defendants to provide a complete accounting of the loan, including, without limitation, all amounts borrowed, plus interest, charges, fees and costs, the amount paid and the amount Defendants allege is due.

Jury Demand

Plaintiff demands trial by jury.

Prayer

WHEREFORE, Plaintiff prays for judgment and order against defendants, and each of them, as to each and every cause of action, jointly and severally, as follows:

ON THE FIRST AND SECOND CLAIMS:

1. Compensatory damages according to proof;
2. Special damages according to proof;
3. Punitive damages according to proof;

ON THE THIRD CLAIM:

4. For rescission;
5. For a civil penalty pursuant to statute;
6. For an actual damages to be proved at trial;
7. For additional damages up to $1,000.00;
8. For reasonable attorney's fees according to proof;

ON THE FOURTH CLAIM:

9. That the actions of Defendants, and each of them, be determined to be unfair and deceptive business practices in violation of California law;
10. That the actions of defendants be determined to be in violation of California Business and Professions Code § 17200 *et seq*.; Rosenthal Fair Debt Collection Practices Act, including, but not limited to Civil Code Sections 1788(e) and (f), and the Federal Fair Debt Collection Practices Act, 15 U.S.C. Sections 1692 *et seq*., and the Real Estate Settlement Procedures Act (RESPA) 12 U.S.C. Sections 2601 through 2617;
11. For rescission or;

12. In the alternative, for actual damages according to proof, twice the amount of any financial charges that were incurred, not less than $200 or greater than $2,000, and all finance charges and fees paid; and

13. For reasonable attorney's fees according to proof;

ON THE FIFTH CLAIM:

14. For a judgment that Plaintiff is the owner in fee simple of the Subject Property and that Defendants have no interest in the property adverse to the Plaintiff;

ON THE SIXTH CLAIM:

15. That the foreclosure or attempted foreclosure of the Subject Property by Defendants, and each of them, be deemed illegal and void and the same be permanently enjoined;

16. That an order issue setting aside any such sale of the Subject Property by Defendants, and each of them, and declaring any such sale to be null and void and of no force and effect;

17. That an order issue that any purchaser from Defendants, and each of them, deliver their alleged deed to Subject Property to the court, and that any such deed be cancelled;

ON THE SEVENTH CLAIM:

18. That a temporary injunction, a preliminary injunction, and a permanent injunction issue, enjoining Defendants, and each of them, including all persons acting under, for, or in concert with Defendants, from taking any action to obtain possession of or sell the Subject Property pending a determination on the merits of the case;

19. That a permanent injunction issue directing Defendants to transfer title of the Subject Property back to Plaintiff;

ON THE EIGHTH CLAIM:

20. For an accounting;

ON ALL CLAIMS;

21. For reasonable attorney's fees, costs and disbursements in this action; and,

22. That such other and further relief the Court may deem just and proper be awarded as well.

Dated: January 6, 2009

M. W. Roth, PLC

By: ______________________

Marjan Alitalaei
Attorneys for Plaintiff